HOUSE BILL 3459
By Dennis

SENATE BILL 3070

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 48, relative to the Tennessee Business Corporation Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-11-201, is amended by adding the following language between the word "requires" and the colon (:):

(or the term is otherwise defined in another chapter of the Tennessee Business Corporation Act, in which event the term shall have such other meaning for that chapter)

SECTION 2. Tennessee Code Annotated, Section 48-11-201(7), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(7) "Corporation", "domestic corporation" or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to chapters 11-27 of this title;

SECTION 3. Tennessee Code Annotated, Section 48-11-201(8), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(8) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § 48-11-202, by electronic transmission;

SECTION 4. Tennessee Code Annotated, Section 48-11-201(10), is amended by deleting the language "§ 48-11-202" and by substituting instead the language "§ 48-11-202(i)".

SECTION 5. Tennessee Code Annotated, Section 48-11-201(13), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(13) "Entity" includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; estate; trust; domestic and foreign unincorporated entity

and state, United States, and foreign government. The term includes two (2) or more persons having a joint or common economic interest;

SECTION 6. Tennessee Code Annotated, Section 48-11-201, is amended by inserting the following language as new, appropriately designated subdivisions:

( ) "Document" means:

(A) Any tangible medium on which information is inscribed, and includes any writing or written instrument; or

(B) An electronic record;

( ) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

( ) "Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with § 48-11-202;

( ) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which is

(A) Suitable for the retention, retrieval, and reproduction of information by the recipient; and

(B) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with § 48-11-202(j);

( ) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the laws of this state;

( ) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state;

( ) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(A) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(B) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs;

( ) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic document;

( ) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the provisions of the Tennessee Nonprofit Corporation Act, compiled in chapters 51-68 of this title;

( ) "Organic document" means a public organic document or a private organic document;

( ) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity;

( ) "Private organic document" means any document (other than the public organic document, if any) that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated;

( ) "Public organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated;

( ) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under § 48-18-401(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

( ) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(A) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(B) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission;

( ) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association; and

( ) "Writing" or "written" means any information in the form of a document;

SECTION 7. Tennessee Code Annotated, Section 48-11-202, is amended by deleting the section in its entirety and by substituting instead the following:

48-11-202. General notice requirements.

(a) Notice under chapters 11-27 of this title must be in writing unless oral notice is reasonable in the circumstances and not prohibited by the charter or bylaws. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under chapters 11-27 of this title must be in English.

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Notice or other communication to a domestic or foreign corporation (authorized to transact business in this state) may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(d) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (j).

(e)

(1) Any consent under subsection (d) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if:

(A) The corporation is unable to deliver two (2) consecutive electronic transmissions given by the corporation in accordance with such consent; and

(B) Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communication.

(2) The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(f) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(g) Receipt of an electronic acknowledgement from an information processing system described in subdivision (f)(1) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(h) An electronic transmission is received under this section even if no individual is aware of its receipt.

(i) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in a physical form, the earliest of when it is actually received, or when it is left at:

(A) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under § 48-26-101(c);

(B) A director's residence or usual place of business; or

(C) The corporation's principal place of business;

(2) If mailed first class postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United State mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(A) If sent by a registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(B) Five (5) days after it is deposited in the United State mail;

(4) If an electronic transmission, when it is received as provided in subsection (f); or

(5) If oral, when communicated, if communicated in a comprehensible manner.

(j) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(1) The electronic transmission is otherwise retrievable in perceivable form; and

(2) The sender and the recipient have consented in writing to the use of such form of electronic transmission.

(k) If chapters 11-27 of this title prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If the charter or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of chapters 11-27 of this title, those requirements govern. The charter or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

SECTION 8. Tennessee Code Annotated, Section 48-11-301, is amended by inserting the following language as a new subsection (j) and by redesignating subsequent subsections accordingly:

(j) Whenever this title permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;

(2) The facts may include, but are not limited to:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(B) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

(3) As used in this subsection (j):

(A) "Filed document" means a document filed with the secretary of state under any provision of chapters 11-27 of this title, except chapter 25 or § 48-26-203; and

(B) "Plan" means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange;

(4) None of the following provisions of a plan or filed document shall be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document;

(B) The registered office of any entity required in a filed document;

(C) The registered agent of any entity required in a filed document;

(D) The number of authorized shares and designation of each class or series of shares;

(E) The effective date of a filed document;

(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subdivision (j)(2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision (j)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

SECTION 9. Tennessee Code Annotated, Section 48-11-303(a), is amended by inserting the following language as a new subdivision (14) to the enumeration of fees collected by the secretary of state and by redesignating the remaining subdivisions accordingly:

(14) Articles of entity conversion…………$100.00

SECTION 10. Tennessee Code Annotated, Section 48-11-303(d), is amended by deleting the language "(11)-(17)" and by substituting instead the language "(11)-(18)".

SECTION 11. Tennessee Code Annotated, Section 48-11-304(b), is amended by deleting the language "(17), (18), (22), (28), (30) and (31)" and by substituting instead the language "(18), (19), (23), (29), (31) and (32)", respectively.

SECTION 12. Tennessee Code Annotated, Section 48-12-102(b)(3), is amended by deleting the language "§ 48-18-304" in subdivision (C) and by substituting instead the language "§ 48-18-302".

SECTION 13. Tennessee Code Annotated, Section 48-12-107, is amended by adding the following language as a new subsection:

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

SECTION 14. Tennessee Code Annotated, Section 48-16-205, is amended by inserting the following language as a new subsection (c) and by redesignating the subsequent subsections accordingly:

(c) Subject to the conditions set forth in subsection (a), the board of directors may authorize one (1) or more officers to designate the recipients of rights, options, warrants or other equity compensation awards that involve the issuance of shares and determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants or other equity compensation awards and the terms thereof to be received by the recipients; provided, that no officer shall use such authority to designate either such officer or such other persons as the board of directors may specify as a recipient of such rights, options, warrants or other equity compensation awards.

SECTION 15. Tennessee Code Annotated, Section 48-17-101(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 48-17-104, a corporation shall hold a meeting of shareholders annually at a time stated in, or fixed in accordance with, the bylaws.

SECTION 16. Tennessee Code Annotated, Section 48-17-104, is amended by deleting the section in its entirety and by substituting instead the following:

48-17-104. Action without meeting.

(a) Action required or permitted by chapters 11-27 of this title to be taken at a shareholders' meeting may be taken without a meeting. If all shareholders entitled to vote on the action consent to taking such action without a meeting, the affirmative vote of the number of shares that would be necessary to authorize or take such action at a meeting is the act of the shareholders. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each shareholder entitled to vote on the action in one (1) or more counterparts, indicating each signing shareholder's vote or abstention on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) The charter may provide that any action required or permitted by chapters 11-27 of this title to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise determined under § 48-17-103 or § 48-17-107, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Unless the charter, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If chapters 11-27 of this title or the charter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders, then the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that under chapters 11-27 of this title would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(f)

(1) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its non-consenting voting shareholders written notice of the action not more than ten (10) days after:

(A) Written consents sufficient to take the action have been delivered to the corporation; or

(B) Such later date that tabulation of consents is completed pursuant to an authorization under subsection (d).

(2) The notice must reasonably describe the action taken and contain or be accompanied by the same material of this title, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent; provided, that this subsection (g) shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, their shareholder's agent or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

SECTION 17. Tennessee Code Annotated, Title 48, Chapter 17, Part 1, is amended by adding the following language as a new section:

48-17-110. Conduct of the meeting.

(a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(b) The chair, unless the charter or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

SECTION 18. Tennessee Code Annotated, Section 48-18-107, is amended by deleting the section in its entirety and by substituting instead the following:

48-18-107. Resignation of directors.

(a) A director may resign at any time by delivering a written resignation to the board of directors, or its chair, or to the secretary of the corporation.

(b) A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

SECTION 19. Tennessee Code Annotated, Section 48-18-202, is amended by deleting the section in its entirety and by substituting instead the following:

48-18-202. Action without meeting.

(a) Except to the extent that the charter or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by chapters 11-27 of this title to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation. If all directors consent to taking such action without a meeting, the affirmative vote of the number of directors that would be necessary to authorize or take such action at a meeting is the act of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director in one (1) or more counterparts, indicating each signing director's vote or abstention on the action, and delivered to the corporation, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is the act of the board of directors when one (1) or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

SECTION 20. Tennessee Code Annotated, Title 48, Chapter 18, Part 3, is amended by deleting Section 48-18-302 and Section 48-18-303 and by redesignating Section 48-18-304 as Section 48-18-302.

SECTION 21. Tennessee Code Annotated, Section 48-18-401(a), is amended by deleting the language "; provided, that every corporation shall have a president and a secretary".

SECTION 22. Tennessee Code Annotated, Section 48-18-401(d), is amended by deleting subsection (d) and by substituting instead the following language:

(d) The same individual may simultaneously hold more than one (1) office in a corporation.

SECTION 23. Tennessee Code Annotated, Section 48-18-509, is amended by deleting the subject heading of the section and by substituting instead the following:

Exclusivity of rights; charter limiting indemnification; payment of witness expenses.

SECTION 24. Tennessee Code Annotated, Section 48-18-509(a)(3), is amended by deleting the language "§ 48-18-304" and by substituting instead the language "§ 48-18-302".

SECTION 25. Tennessee Code Annotated, Section 48-18-601, is amended by deleting the language "§ 48-18-302" and by substituting instead the language "part 7 of this chapter".

SECTION 26. Tennessee Code Annotated, Title 48, Chapter 18, is amended by adding the following language as a new part:

Part 7—Conflicting Interest Transactions.

48-18-701. Part definitions.

In this part:

(1) "Control" (including the term "controlled by") means:

(A) Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(B) Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns;

(2) "Director's or officer's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation):

(A) To which, at the relevant time, the director or officer is a party; or

(B) Respecting which, at the relevant time, the director or officer had knowledge and a material financial interest known to the director or officer; or

(C) Respecting which, at the relevant time, the director or officer knew that a related person was a party or had a material financial interest;

(3) "Fair to the corporation" means, for purposes of § 48-18-702(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(A) Fair in terms of the director's or officer's dealings with the corporation; and

(B) Comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation;

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's or officer's judgment when participating in action on the authorization of the transaction;

(5) “Material relationship” means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action to be taken;

(6)

(A) “Qualified director” means a director who, at the time action is to be taken under § 48-18-703, is not a director:

(i) As to whom the transaction is a director’s or officer’s conflicting interest transaction; or,

(ii) Who has a material relationship with another director as to whom the transaction is a director’s or officer’s conflicting interest transaction;

(B) The presence of one (1) or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(i) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others; or

(ii) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director), is or was also a director;

(7) "Related person" means:

(A) The director's or officer's spouse;

(B) A child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece or nephew (or spouse of any thereof) of the director or officer or of the director's or officer's spouse;

(C) An individual living in the same home as the director of officer;

(D) An entity (other than the corporation or an entity controlled by the corporation) controlled by the director or officer or any person specified in subdivisions (7)(A)-(C);

(E) A domestic or foreign:

(i) Business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director or officer is a director;

(ii) Unincorporated entity of which the director or officer is a general partner or a member of the governing body; or

(iii) Individual, trust or estate for whom or of which the director or officer is a trustee, guardian, personal representative or like fiduciary; or

(F) A person that is or an entity that is controlled by, an employer of the director or officer;

(8) "Relevant time" means:

(A) The time at which directors' action respecting the transaction is taken in compliance with § 48-18-703; or

(B) If the transaction is not brought before the board of directors of the corporation (or its committee) for action under § 48-18-703, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction; and

(9) "Required disclosure" means disclosure of:

(A) The existence and nature of the director's or officer's conflicting interest; and

(B) All facts known to the director or officer respecting the subject matter of the transaction that a director or officer free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

48-18-702. Judicial action.

(a) A transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation) may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director or officer of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director of officer has an interest respecting the transaction, if it is not a director's or officer's conflicting interest transaction.

(b) A director's or officer's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director or officer of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director of officer has an interest respecting the transaction, if:

(1) Directors' action respecting the transaction was taken in compliance with § 48-18-703 at any time;

(2) Shareholders' action respecting the transaction was taken in compliance with § 48-18-704 at any time; or

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

48-18-703. Directors' action.

(a) Directors' action respecting a director's or officer's conflicting interest transaction is effective for purposes of § 48-18-702(b)(1) if the transaction has been authorized by the affirmative vote of a majority (but no fewer than two (2)) of the qualified directors who voted on the transaction, after required disclosure by the conflicted director or officer of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b), provided that:

(1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(2) Where the action has been taken by a committee, all members of the committee were qualified directors, and either:

(A) The committee was composed of all the qualified directors on the board of directors; or

(B) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a), when a transaction is a director's or officer's conflicting interest transaction only because a related person described in § 48-18-701(7)(E) or (F) is a part to or has a material financial interest in the transaction, the conflicted director or officer is not obligated to make required disclosure to the extent that the director or officer reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule; provided, that the conflicted director or officer discloses to the qualified directors voting on the transaction:

(1) All the information required to be disclosed that is not so violative;

(2) The existence and nature of the director's or officer's conflicting interest; and

(3) The nature of the conflicted director's or officer's duty not to disclose the confidential information.

(c)

(1) A majority (but no fewer than two (2)) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(2) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the charter, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

48-18-704. Shareholders' action.

(a) Shareholders' action respecting a director's or officer's conflicting interest transaction is effective for purposes of § 48-18-702(b)(2) if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(1) Notice to shareholders describing the action to be taken respecting the transaction;

(2) Provision to the corporation of the information referred to in subsection (b); and

(3) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

(b) A director or officer who has conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director or officer knows are not qualified shares under subsection (c), and the identity of the holders of those shares.

(c) For purposes of this section:

(1) "Holder" means, and "held by" refers to, shares held by both a record shareholder (as defined in § 48-23-101) and a beneficial shareholder (as defined in § 48-23-101); and

(2) "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) is notified, are held by:

(A) A director or officer who has a conflicting interest respecting the transaction; or

(B) A related person of the director or officer (excluding a person described in § 48-18-701(7)(F)).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to subsection (e), shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) solely because of a director's or officer's failure to comply with subsection (b), and if the director or officer establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director or officer, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the charter, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

SECTION 27. Tennessee Code Annotated, Title 48, Chapter 21, is amended by deleting the chapter in its entirety and by substituting instead the following:

Chapter 21

Merger, Share Exchange and Conversion

48-21-101. Chapter definitions.

As used is chapter, unless the context otherwise requires:

(1) "Converted entity" means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation;

(2) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation;

(3) "Eligible interests" means interests or memberships;

(4) "Filing entity" means an unincorporated entity that is of a type that is created by filing a public organic document;

(5) "Interest holder" means a person who holds of record an interest;

(6) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation;

(7) "Participating shares" means shares however denominated that entitle their holders to participate in distributions on dissolution after all preferences have been paid;

(8) "Party to a merger or share exchange" means any domestic or foreign corporation, or eligible entity that will:

(A) Merge in a plan of merger;

(B) Acquire shares or eligible interests of another domestic or foreign corporation, or an eligible entity in a share exchange; or

(C) Have all of its shares or eligible interests of one (1) or more classes or series acquired in share exchange;

(9) "Survivor" means the corporation or unincorporated entity that is in existence immediately after consummation of a merger or entity conversion pursuant to this chapter; and

(10) "Voting shares" means shares that entitle their holders to vote unconditionally in the election of directors.

48-21-102. Merger.

(a) One (1) or more corporations may merge into one (1) or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, or two (2) or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in this chapter.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the foreign business corporation or eligible entity. If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and dissenters' rights exercised in accordance with the procedures in this chapter and chapter 23 of this title. For the purposes of applying this chapter and chapter 23 of this title:

(1) The eligible entity, its members or interest holders, eligible interests, and organic documents taken together shall be deemed to be a domestic

business corporation, shareholders, shares and charter, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(c) The plan of merger must set forth:

(1) The name of each domestic or foreign business corporation or eligible entity planning to merge and the name of each domestic or foreign business corporation or eligible entity that shall survive the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interest of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interest, cash, other property, or any combination of the foregoing;

(4) The charter of any domestic or foreign business corporation or nonprofit corporation, or the organic documents of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign business or nonprofit corporation or unincorporated is not to be created by the merger, any amendments to the survivor's charter or organic documents; and

(5) Any other provision required by the laws under which any party to the merger is organized or by which it is governed, or by the charter or organic documents of any such party.

(d) The plan of merger may set forth any other provisions relating to the merger.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with § 48-11-301(j).

(f) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount of kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(2) The charter of any corporation, or the organic documents of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by § 48-20-102 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted, or devised, unless and until the eligible entity obtains a court order specifying the disposition of the property to the extent required by and pursuant to § 35-15-413.

48-21-103. Share exchange.

(a) Through a share exchange:

(1) A domestic corporation may acquire all of the outstanding shares of one (1) or more classes or series of shares of another domestic or foreign corporation or all of the interests of one (1) or more classes or series of interests of a domestic or foreign other entity, in exchange for shares, other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one (1) or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the law under which the corporation or other entity is organized or by which it is governed. If the organic law of a domestic other entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, the share exchange effectuated, and dissenters' rights exercised in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and dissenters' rights exercised, in accordance with the procedures in this chapter and chapter 23 of this title. For the purposes of applying this chapter and chapter 23 of this title:

(1) The other entity, its interest holders, interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and charter, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(c) The plan of share exchange must set forth:

(1) The name of each corporation or other entity whose shares or interests will be acquired and the name of the acquiring corporation or other entity;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of each corporation or interests in an other entity who shares or interests will be acquired under the share exchange into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the charter or organic document of any such party.

(d) The plan of share exchange may set forth other provisions relating to the share exchange.

(e) This section does not limit the power of a domestic corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation of interests of another entity through a voluntary exchange or otherwise.

48-21-104. Action on plan of merger or share exchange.

In the case of a domestic corporation that is a party to a merger or share exchange:

(1) The plan of merger or share exchange shall be adopted by the board of directors of each party to the merger or share exchange and approved by the shareholders;

(2) Except as provided in subdivision (7) and in § 48-21-105, after adopting the plan of merger or share exchange, the board of directors shall submit the plan of merger of share exchange for approval by the shareholders. The board of directors must also transmit the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit the shareholders the basis for that determination;

(3) The board of directors may condition its submission of the plan of merger or share exchange to its shareholders on any basis;

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the shareholders' meeting at which the plan is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or share exchange and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the charter or organic documents of that corporation or other

entity. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the charter or organic documents that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the charter or organizational documents of the new corporation or other entity;

(5) Unless chapters 11-27 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting groups;

(6) Separate voting by voting groups is required:

(A) On a plan of merger, by each class or series of shares that:

(i) Are to be converted under the plan of merger into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; or

(ii) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the charter, would require action by separate voting groups under § 48-20-104;

(B) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; or

(C) On a plan of merger or share exchange, if the voting group is entitled under the charter or by agreement to vote as a voting group to approve a plan of merger or share exchange;

(7) Unless the charter otherwise provides, approval by the shareholders of a domestic corporation of a plan of merger or share exchange shall not be required if:

(A) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(B) Except for amendments enumerated in § 48-20-102, its charter will not differ from the charter before the merger;

(C) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or exchange will hold the same number of shares, with identical designations, preferences, limitations and relative rights, immediately after the effective date of the merger or exchange;

(D) The voting power of the shares outstanding immediately after the merger or exchanging, plus the voting power of the shares issuable as a result of the merger or exchange (either by the conversion of securities issued pursuant to the merger or exchange or by the exercise of rights and warrants issued pursuant to the merger or exchange), will not exceed by more than twenty percent (20%) the voting power of the total shares of the corporation outstanding immediately before the merger or exchange; and

(E) The number of participating shares outstanding immediately after the merger or exchange, plus the number of participating shares issuable as a result of the merger or exchange (either by the conversion of securities issued pursuant to the merger or exchange by the exercise of rights and warrants issued pursuant to the merger or exchange), will not exceed more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger or exchange; and

(8) If as a result of a merger or share exchange one (1) or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder, of a separate written consent to become subject to such owner liability.

48-21-105. Merger of parent and subsidiary.

(a) A domestic parent corporation owning at least ninety percent (90%) of the outstanding voting shares of each class and series of a domestic or foreign subsidiary corporation or eligible interests of an other entity may either:

(1) Merge the subsidiary corporation or other entity into the parent corporation;

(2) Merge the parent corporation into the subsidiary corporation or other entity; or

(3) Merge two (2) or more such subsidiary corporations or subsidiary other entities with and into each other.

(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(1) The name of the parent corporation owning at least ninety percent (90%) of the outstanding voting shares of the subsidiary corporation or eligible interests of the other entity and the name of the subsidiary corporation(s) or other entity or entities to be a party to the merger, and the name of the corporation or other entity that is to survive the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each corporation or eligible interests of the subsidiary other entity into shares, eligible interests, obligations or other securities of the survivor or of any other corporation or other entity or into cash or other property or any combination of the foregoing; and

(4) Such other provisions with respect to the proposed merger as the board considers necessary or desirable.

(c) No vote of the shareholders of a subsidiary corporation or approval of interest holders of a subsidiary other entity shall be required with respect to such a merger. If the parent corporation will be the survivor, no vote of its shareholders shall be required. If the subsidiary corporation or other entity will be the survivor, the approval of the shareholders of the parent corporation shall be obtained in the manner provided in § 48-21-104.

(d) If under subsection (c) approval of a merger by the subsidiary's shareholders or interest holders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders or interest holders that the merger has become effective.

(e) Except as provided in subsections (a)-(d), a merger between a parent and a subsidiary shall be governed by the provisions of this chapter applicable to mergers generally.

48-21-106. Abandonment of merger or share exchange.

(a) After a plan of merger or share exchange has been adopted and approved as required by chapters 11-27 of this title, and at any time before the merger or share exchange has become effective, the merger or share exchange may be abandoned (subject to any contractual rights) by any corporation or other entity that is a party to the merger or share exchange, without action by the shareholders or interest holders of such party, in accordance with the procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of such corporation or the managers of such other entity.

(b) If the merger or share exchange is abandoned after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement, executed on behalf of each party to the merger or share exchange by an officer or other duly authorized representative, stating that the merger or share exchange has been abandoned in accordance with the plan and this section, shall be filed with the secretary of state prior to the effectiveness of the merger or share exchange.

(c) The secretary of state shall, when all fees have been paid as required by law:

(1) Endorse on the original and each copy the word “filed" and the month, day, and year of the filing thereof;

(2) File the original in the office of the secretary of state; and

(3) Issue a certificate of abandonment to each party to the merger or share exchange.

(d) Upon the filing of such statement by the secretary of state, the merger or share exchange shall be deemed abandoned and shall not become effective.

48-21-107. Articles of merger of share exchange.

(a) After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be executed on behalf of each party to the merger or share exchange by an officer or other duly authorized representative and shall set forth:

(1) The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;

(2) If the charter or organic documents of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's charter or organic documents or the charter of the new corporation;

(3) If approval by the shareholders of a domestic corporation that is a party to the merger or exchange is not required by this chapter, a statement to that effect and the date on which the plan was adopted by the board of directors;

(4) If approval by the shareholders of a domestic corporation that is a party to the merger or exchange is required by this chapter, a statement to that effect and a statement that the plan was approved by the affirmative vote of the required percentage of all of:

(A) The votes entitled to be cast if there is no voting by voting groups; or

(B) The votes entitled to be cast by each voting group having the right to vote separately on the plan and the votes cast by the outstanding shares otherwise entitled to vote on the plan; and

(5) As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and performance of

its terms were duly authorized by all action required by the laws under which it was organized and by its charter or organic documents.

(b) The original of the articles of merger or share exchange shall be delivered to the secretary of state for filing. A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

48-21-108. Effect of merger or share exchange.

(a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as an entity surviving the merger shall survive, and the separate existence of every other corporation or eligible entity that is a party to the merger shall cease;

(2) All property owned by, and every contract right possessed by, each corporation or eligible entity that is merged into the survivor shall be vested in the survivor without reversion or impairment;

(3) All liabilities of each corporation or eligible entity that is merged into the survivor shall be vested in the survivor;

(4) A proceeding pending against any corporation or eligible entity that is a party to the merger may be continued as if the merger did not occur or the name of the survivor may be substituted in the proceeding for any corporation or eligible entity whose existence ceased in the merger;

(5) The charter or organic document of the survivor shall be amended to the extent provided in the plan of merger;

(6) The charter or organic documents of a survivor created by the plan of merger shall become effective; and

(7) The share of each corporation and the interests of each eligible entity that are to be converted into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing in the merger shall be converted or exchanged, and the former holders of such shares or eligible interests shall be entitled only to the rights provided to them in the plan of merger or to their rights under chapter 23 of this title or the organic law of the eligible entity.

(b) When a share exchange takes effect, the shares of each corporation that are to be exchanged for shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property or any combination of the foregoing in the share exchange shall be exchanged, and the former holders of such shares shall be entitled only to the rights provided in the plan of share exchange or to their rights under chapter 23 of this title.

(c) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise dissenters' rights; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23.

(d) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations or liabilities of a party to the merger or share exchange shall be as follows:

(1) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or

interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange;

(2) The person shall not have owner liability under the organic law of the entity in which the person was shareholder or interest holder prior to the merger or share exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or share exchange;

(3) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (d)(1), as if the merger or share exchange had not occurred; and

(4) The person shall have whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by subdivision (d)(1), as if the merger or share exchange had not occurred.

(e) A merger or share exchange shall take effect upon the date the articles of merger or share exchange are filed as provided in § 48-21-107(b) or on such later date as may be specified in the plan of merger or share exchange.

48-21-109. Entity conversion.

(a) A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.

(b) A domestic business corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(c) A domestic unincorporated entity may become a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and dissenters' rights exercised, in accordance with the procedures in this chapter and chapter 23. Without limiting the provisions of this subsection (c), a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) and § 48-21-111(7). For purposes of applying this chapter and chapter 23:

(1) The unincorporated entity, its interest holders, interests, and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and charters, respectively, and vice versa, as the context may require; and

(2) If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction.

(e) If any provision of a debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic business corporation before January 1, 2013, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2013.

48-21-110. Plan of entity conversion.

(a) A plan of entity conversion must include:

(1) A statement of the type of other entity the survivor will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) The terms and conditions of the conversion;

(3) The manner and basis of converting the shares of the domestic business corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and

(4) The full text, as they will be in effect immediately after consummation of the conversion, of the organic documents of the survivor.

(b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders, the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash or other property to be received under the plan by the shareholders;

(2) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the survivor comparable to § 48-20-102; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(c) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 48-11-301.

48-21-111. Action on a plan of entity conversion.

In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by the board of directors;

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination;

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis;

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion;

(5) Unless chapter 11-27 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group;

(6) If any provision of the charter, bylaws or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2013, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended; and

(7) If as a result of the conversion one (1) or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

48-21-112. Articles of entity conversion.

(a) After the conversion of a domestic business corporation to a domestic unincorporated entity has been adopted and approved as required by this chapter, articles of entity conversion shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the survivor;

(2) State the type of unincorporated entity that the survivor will be;

(3) Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the charter; and

(4) If the survivor is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted, or have attached a public organic document; except that, in either case, provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic unincorporated entity to a domestic business corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion shall be executed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of § 48-14-101;

(2) Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

(3) Either contain all of the provisions that § 48-12-102(a) requires to be set forth in a charter and any other desired provisions that § 48-12-102(b) permits to be included in a charter, or have attached a charter; except that, in either case, provisions that would not be required to be included in a restated charter of a domestic business corporation may be omitted.

(c) After the conversion of a foreign unincorporated entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be executed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of § 48-14-101;

(2) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(3) Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

(4) Either contain all of the provisions that § 48-12-102(a) requires to be set forth in a charter and any other desired provisions that § 48-12-102(b) permits to be included in a charter, or have attached a charter; except that, in either case, provisions that would not be required to be included in a restated charter of a domestic business corporation may be omitted.

(d) The articles of entity conversion shall be delivered to the secretary of state for filing, and shall take effect at the effective time provided in § 48-11-304. Articles of entity conversion filed under subsection (a) or (b) may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to chapter 25, its certificate of authority or other type of foreign qualification shall be cancelled automatically on the effective date of its conversion.

48-21-113. Surrender of charter upon conversion.

(a) Whenever a domestic business corporation has adopted and approved, in the manner required by this chapter, a plan of entity conversion providing for the corporation to be converted to a foreign unincorporated entity, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign unincorporated entity;

(3) A statement that the conversion was duly approved by the shareholders in the manner required by this chapter and the charter;

(4) The jurisdiction under the laws of which the survivor will be organized; and

(5) If the survivor will be a nonfiling entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing. The articles of charter surrender shall take effect on the effective time provided in § 48-11-304.

48-21-114. Effect of entity conversion.

(a) When a conversion under § 48-21-111 takes effect:

(1) All title to real and personal property, both tangible and intangible, of the converting entity remains in the survivor without reversion or impairment;

(2) All obligations and liabilities of the converting entity continue as obligations and liabilities of the survivor;

(3) An action or proceeding pending against the converting entity continues against the survivor as if the conversion had not occurred;

(4) In the case of a survivor that is a filing entity, its charter or public organic document and its private organic document become effective;

(5) In the case of a survivor that is a nonfiling entity, its private organic document becomes effective;

(6) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion; and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any dissenters' rights they may have under chapter 23 or under the applicable organic law of the converting entity if it is other than a corporation; and

(7) The survivor is deemed to:

(A) Be incorporated or organized under and subject to the organic law of the converting entity for all purposes;

(B) Be the same corporation or unincorporated entity without interruption as the converting entity; and

(C) Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic business corporation to a foreign other entity becomes effective, the surviving entity is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise dissenters' rights in connection with the conversion; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23.

(c) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the survivor shall be personally liable only for those debts, obligations, or liabilities of the survivor that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unincorporated entity that converts to a domestic business corporation shall be as follows:

(1) The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any such owner liability arose before the effective time of the articles of entity conversion;

(2) The interest holder shall not have owner liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion;

(3) The provisions of the organic law of the unincorporated entity shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred; and

(4) The interest holder shall have whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity

with respect to any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred.

(e) The converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and such conversion shall not be deemed to constitute a dissolution of such entity.

(f) The interests of the interest holders of the converting entity, unless otherwise agreed, shall be cancelled and become of no effect whatsoever, with respect to the survivor, and the former holders of such interests shall be entitled only to the rights provided in the plan of conversion or the organic documents for the conversion of shares into interests in the survivor.

(g) A conversion shall take effect upon the date the articles of conversion are filed, as provided in § 48-21-112, or on such later date as may be specified in the plan of conversion.

(h) Notwithstanding any other law to the contrary, this section and § 48-21-109 shall have no effect on the application of title 67 and other state and federal tax statutes. Any tax consequences of the conversion as referenced herein shall continue to be controlled by applicable state and federal tax statutes as they may be amended from time to time.

48-21-115. Abandonment of entity conversion.

(a) Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after the plan has been adopted and approved as required by § 48-21-111, and at any time before the entity conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

48-21-116. Nonprofit conversion.

(a) A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

(b) A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in this section.

(c) The plan of nonprofit conversion must include:

(1) The terms and conditions of the conversion;

(2) The manner and basis of reclassifying the shares of the corporation following its conversion into memberships, if any, or securities, obligations, rights to acquire memberships or securities, cash, other property, or any combination of the foregoing;

(3) Any desired amendments to the charter of the corporation following its conversion; and

(4) If the domestic business corporation is to be converted to a foreign nonprofit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(d) The plan of nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of memberships or securities, obligations, rights to acquire memberships or securities, cash, or other property to be received by the shareholders under the plan;

(2) The charter as it will be in effect immediately following the conversion, except for changes permitted by § 48-20-102; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 48-11-301.

(f) If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic business corporation before January 1, 2013, contains a provision applying to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2013.

48-21-117. Action on a plan of nonprofit conversion.

In the case of a conversion of a domestic business corporation to a domestic or foreign nonprofit corporation:

(1) The plan of nonprofit conversion must be adopted by the board of directors;

(2) After adopting the plan of nonprofit conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination;

(3) The board of directors may condition its submission of the plan of nonprofit conversion to the shareholders on any basis;

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the meeting of shareholders at which the plan of nonprofit conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the charter as it will be in effect immediately after the nonprofit conversion;

(5) Unless chapters 11-27 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group; and

(6) If any provision of the charter, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2013, applies to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be

deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2013.

48-21-118. Articles of nonprofit conversion.

(a) After a plan of nonprofit conversion providing for the conversion of a domestic business corporation to a domestic nonprofit corporation has been adopted and approved as required by this chapter, articles of nonprofit conversion shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of nonprofit conversion and if that name does not satisfy the requirements of § 48-54-101, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of § 48-54-101; and

(2) A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by this chapter and the charter.

(b) The articles of nonprofit conversion shall either contain all of the provisions that § 48-52-102(a) requires to be set forth in the charter of a domestic nonprofit corporation and any other desired provisions permitted by § 48-52-102(b), or shall have attached a charter that satisfies the requirements of § 48-52-102. In either case, provisions that would not be required to be included in a charter of a domestic nonprofit corporation may be omitted.

(c) The articles of nonprofit conversion shall be delivered to the secretary of state for filing and shall take effect at the effective time provided in § 48-11-304.

48-21-119. Surrender of a charter upon foreign nonprofit conversion.

(a) Whenever a domestic business corporation has adopted and approved, in the manner required by this chapter, a plan of nonprofit conversion providing for the corporation to be converted to a foreign nonprofit corporation, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign nonprofit corporation;

(3) A statement that the foreign nonprofit conversion was duly approved by the shareholders in the manner required by this section and the charter; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing. The articles of charter surrender shall take effect on the effective time provided in § 48-11-304.

48-21-120. Effect of Nonprofit Conversion.

(a) When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;

(4) The charter of the domestic or foreign nonprofit corporation becomes effective;

(5) The shares of the corporation are reclassified into memberships, securities, obligations, rights to acquire memberships, or securities, or into cash or other property in accordance with the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit conversion or to any rights they may have under chapter 23; and

(6) The corporation is deemed to:

(A) Be a domestic nonprofit corporation for all purposes;

(B) Be the same corporation without interruption as the corporation that existed prior to the conversion; and

(C) Have been incorporated on the date it was originally incorporated as a domestic business corporation.

(b) When a conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, the foreign nonprofit corporation is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise dissenters' rights in connection with the conversion; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23.

(c) The owner liability of a shareholder in a domestic business corporation that converts to a domestic nonprofit corporation shall be as follows:

(1) The conversion does not discharge any owner liability of the shareholder as a shareholder of the business corporation to the extent any such

owner liability arose before the effective time of the articles of nonprofit conversion;

(2) The shareholder shall not have owner liability for any debt, obligation, or liability of the nonprofit corporation that arises after the effective time of the articles of nonprofit conversion;

(3) The laws of this state shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (c)(1), as if the conversion had not occurred and the nonprofit corporation were still a business corporation; and

(4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of this state with respect to any owner liability preserved by subdivision (c)(1), as if the conversion had not occurred and the nonprofit corporation was still a business corporation.

(d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the nonprofit corporation shall have owner liability only for those debts, obligations, or liabilities of the nonprofit corporation that arise after the effective time of the articles of nonprofit conversion.

48-21-121. Abandonment of a nonprofit conversion.

(a) Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by this section, and at any time before the nonprofit conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a nonprofit conversion is abandoned under subsection (a) after articles of nonprofit conversion or articles of charter surrender have been filed with the secretary of state but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the nonprofit conversion. The statement shall take effect upon filing, and the nonprofit conversion shall be deemed abandoned and shall not become effective.

SECTION 28. Tennessee Code Annotated, Section 48-22-101(a), is amended by deleting subdivision (3) in its entirety and by substituting instead the following:

(3) Transfer any or all of the corporation's assets to one (1) or more corporations or other entities all of the shares or interests of which are owned by the corporation.

SECTION 29. Tennessee Code Annotated, Section 48-23-101, is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, and, for purposes of §§ 48-23-203—48-23-302, includes the survivor of a merger or conversion or the acquiring entity in a share exchange of that issuer;

SECTION 30. Tennessee Code Annotated, Section 48-23-102(a)(1), is amended by deleting subdivision (A) in its entirety and by substituting instead the following:

(A) If shareholder approval is required for the merger by § 48-21-104 or the charter and the shareholder is entitled to vote on the merger if the merger is submitted to a vote at a shareholders' meeting or the shareholder is a nonconsenting shareholder under § 48-17-104(b) who would have been entitled to vote on the merger if the merger had been submitted to a vote at a shareholders' meeting; or

SECTION 31. Tennessee Code Annotated, Section 48-23-102(a), is amended by deleting subdivisions (2) and (3) and by substituting instead the following:

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to

vote on the plan if the plan is submitted to a vote at a shareholders' meeting or the shareholder is a nonconsenting shareholder under § 48-17-104(b) who would have been entitled to vote on the plan if the plan had been submitted to a vote at a shareholders' meeting;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange if the sale or exchange is submitted to a vote at a shareholders' meeting or the shareholder is a nonconsenting shareholder under § 48-17-104(b) who would have been entitled to vote on the sale or exchange if the sale or exchange had been submitted to a vote at a shareholders' meeting, including a sale of all, or substantially all, of the property of the corporation in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

SECTION 32. Tennessee Code Annotated, Section 48-23-102(a), is amended by adding the following language as a new subdivision:

(6) Consummation of a conversion of the corporation to another entity pursuant to chapter 21 of this title.

SECTION 33. Tennessee Code Annotated, Section 48-23-201, is amended by deleting the section in its entirety and by substituting instead the following:

48-23-201. Notice of dissenters' rights.

(a) Where any corporate action specified in § 48-23-102(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice (including any meeting notice required under chapters 11-27 to be provided to nonvoting shareholders) must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert dissenters' rights under this chapter. If the corporation concludes that dissenters' rights are or may be available, a copy of this chapter must accompany the meeting notice sent to those record shareholders entitled to exercise dissenters' rights.

(b) In a merger pursuant to § 48-21-105, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert dissenters; rights that the corporate action became effective. Such notice must be sent within ten (10) days after the corporate action became effective and include the materials described in § 48-23-203.

(c) Where any corporate action specified in § 48-23-102(a) is to be approved by written consent of the shareholders pursuant to § 48-17-104(a) or § 48-17-104(b):

(1) Written notice that dissenters' rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that dissenters' rights are or may be available, must be accompanied by a copy of this chapter; and

(2) Written notice that dissenters' rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by § 48-17-104(e) and § 48-17-104(f), may include the materials described in § 48-23-203 and, if the corporation has concluded that dissenters' rights are or may be available, must be accompanied by a copy of this chapter.

(d) A corporation's failure to give notice pursuant to this section will not invalidate the corporate action.

SECTION 34. Tennessee Code Annotated, Section 48-23-202, is amended by deleting the section in its entirety and by substituting instead the following:

48-23-202. Notice of intent to demand payment.

(a) If a corporate action specified in § 48-23-102(a) is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights with respect to shares for which dissenters' rights may be asserted under this chapter:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any such shares in favor of the proposed action.

(b) If a corporate action specified in § 48-23-102(a) is to be approved by less than unanimous written consent, a shareholder who wishes to assert dissenters' rights with respect to shares for which dissenters' rights may be asserted under this chapter must not sign a consent in favor of the proposed action with respect to such shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or subsection (b) is not entitled to payment under this chapter.

SECTION 35. Tennessee Code Annotated, Section 48-23-203, is amended by deleting the section in its entirety and by substituting instead the following:

48-23-203. Dissenters' notice.

(a) If a corporate action requiring dissenters' rights under § 48-23-102(a) becomes effective, the corporation must send a written dissenters' notice and form required by subdivision (b)(1) to all shareholders who satisfy the requirements of § 48-23-202(a) or § 48-23-202(b). In the case of a merger under § 48-21-105, the parent must deliver a dissenters' notice and form to all record shareholders who may be entitled to assert dissenters' rights.

(b) The dissenters' notice must be delivered no earlier than the date the corporate action specified in § 48-23-102(a) became effective, and no later than (10) days after such date, and must:

(1) Supply a form that:

(A) Specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action;

(B) If such announcement was made, requires the shareholder asserting dissenters' rights to certify whether beneficial ownership of those shares for which dissenters' rights are asserted was acquired before that date; and

(C) Requires the shareholder asserting dissenters' rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(A) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision (b)(2)(B);

(B) A date by which the corporation must receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (a) dissenters' notice is sent, and state that the shareholder shall have waived the right to demand payment with respect to the shares unless the form is received by the corporation by such specified date;

(C) The corporation's estimate of the fair value of shares;

(D) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subdivision (b)(2)(B) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(E) The date by which the notice to withdraw under § 48-23-204 must be received, which date must be within twenty (20) days after the date specified in subdivision (b)(2)(B); and

(3) Be accompanied by a copy of this chapter if the corporation has not previously sent a copy of this chapter to the shareholder pursuant to § 48-23-201.

SECTION 36. Tennessee Code Annotated, Section 48-23-204(a), is amended by deleting the language "§ 48-23-203(b)(3)" and by substituting instead the language "§ 48-23-203(b)(2)".

SECTION 37. Tennessee Code Annotated, Section 48-26-102, is amended by adding the following language as a new subsection:

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

SECTION 38. Tennessee Code Annotated, Title 48, Chapter 26, Part 1, is amended by adding the following language as new sections:

48-26-105. Inspection of Record by Directors.

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation's principal office (or if none in this state, its registered officer) is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

48-26-106. Exception to Notice Requirements.

(a) Whenever notice would otherwise be required to be given under chapters 11-27 of this title to a shareholder, such notice need not be given if:

(1) Notices to shareholders of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable and could not be delivered; or

(2) All, but not less than two (2), payments of dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to

such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder delivers to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

SECTION 39. Tennessee Code Annotated, Section 48-26-203, is amended by deleting the section heading and by substituting instead the following:

Filing annual report with secretary of state.

SECTION 40. Tennessee Code Annotated, Section 48-26-203(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation. An annual report of a domestic corporation that sets forth a change of the principal office of the domestic corporation shall be deemed to be an amendment to the charter of the domestic corporation, and the domestic corporation shall not be required to take any further action to amend the charter of the domestic corporation under chapter 20 of this title with respect to such amendment. An annual report of a foreign corporation that sets forth a change of the principal executive office of the foreign corporation shall be deemed to be an amendment to the certificate of authority of the foreign corporation, and the foreign corporation shall not be required to take any further action to amend the certificate of authority of the foreign corporation under § 48-25-104 with respect to such amendment. An annual report of a domestic or foreign corporation that sets forth a change of the registered office or registered agent of the domestic or foreign corporation shall be deemed to be a statement of change for purposes of §§ 48-15-102 and 48-25-108, respectively, and the domestic or foreign corporation shall not be required to take any further action under §§ 48-15-102 and 48-25-108, respectively with respect to such change.

SECTION 41. Tennessee Code Annotated, Section 48-103-203(9), is amended by deleting the language"§§ 48-21-103, 48-21-104 and 48-21-109" and by substituting instead the language "§§ 48-21-102, 48-21-104, and 48-21-105".

SECTION 42. This act shall take effect January 1, 2013, the public welfare requiring it.